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Supreme Court of the United States

OCTOBER TERM, 1943.

No. 217.

WILMA E. ADDISON, ERNESTINE C. LYLES, EDGAR CAMPBELL, SALLIE BAKER AND LUTHER BLACK, PETITIONERS,

VS.

HOLLY HILL FRUIT PRODUCTS, INC., RESPONDENT.

BRIEF IN OPPOSITION TO ISSUANCE OF WRIT OF CERTIORARI.

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BRIEF IN OPPOSITION TO ISSUANCE OF WRIT OF CERTIORARI.

I.

OPINIONS BELOW.

The District Court entered its findings (R. 186) and final judgment (R. 211) and the opinion of the Circuit Court of Appeals was rendered on June 24, 1943 (R. 224) (not yet printed).

II.

GROUNDS ON WHICH JURISDICTION OF THIS COURT IS CLAIMED BY PETITIONERS.

Petitioners fail to clearly and briefly set forth the grounds upon which it is claimed that this Court should grant the writ, but from the Petition and the Brief, it would appear that petitioners are relying upon the following:

(a) Novel problem;

(b) Case constitutes an important precedent in dealing with Section 13(a)(10) of the Fair Labor Standards Act;

(c) Conflict and confusion among district courts on validity of Administrator's definitions.

III.

STATEMENT OF THE CASE.

Petitioners in their Brief under this heading merely refer to the petition for the writ of certiorari, which consists almost entirely of quotations from the opinions of the District Court and of the Circuit Court of Appeals.

Respondent feels it important at this time to clearly state the case so that this Court may not be led into granting a writ and then later determine that the same was improperly granted as happened in *Houston Oil Company of Texas* v. *Goodrich*, 245 U. S. 440, 62 L. Ed. 385; *Layne and Bowler Corporation* v. *Western Well Works, Inc.*, 261 U. S. 387, 67 L. Ed. 712; and *United States* v. *Rimer*, 220 U. S. 547, 55 L. Ed. 578.

The Respondent is a cooperative corporation engaged in canning citrus food at Davenport, Florida (R. 224). Five of its employees instituted this suit in the United States District Court for the Southern District of Florida for under-pay, overtime and statutory penalties under Sections 6 and 7 of the Fair Labor Standards Act, 29 U. S. C. A., Sec. 201, *et seq.*, 52 U. S. Statutes 106, *et seq.* (R. 2). The Respondent contended that the Wage and Hour requirements of the Act were not applicable to its employees for the two seasons involved because of the provisions of Section 13(a)(10) of the Act (R. 13) and also filed other defenses (R. 7, 10, 12); the District Court held against the Respondent on all the defenses and the Circuit Court of Appeals held the Respondent within the exemption 13(a)(10) and therefore did not rule upon the other defenses.

The District Court made its findings to the effect that the exemption did not apply to these employees (R. 186) and entered final judgment (R. 211). On appeal the Circuit Court of Appeals decided two points (R. 224) and these two only:

> (1) That the portion of the definitions by the Administrator of the Wage and Hour Division limiting to seven the number of employees in an establishment before it could be within the "area of production;" and therefore entitled to the exemption, was a void limitation, following its former decision in *Fleming* v. *Farmers Peanut Company*, 128 F. 2d 404, and
>
> (2) Applied the particular evidence of the case to the definitions, with the number of employees limitation deleted, and held that under the particular facts the operations of the employees during the two seasons involved were within the definitions.

The appellate court did not pass upon the validity of the regulations, or any of them, other than to follow its former opinion in reference to the number of employees limitation.

Section 13(a)(10) of the Fair Labor Standards Act provides that Sections 6 and 7 of the Act shall not apply to any individual engaged in certain operations including canning agricultural and horticultural commodities within the "area of production" (as defined by the Administrator). It is admitted that the employees were engaged in the operations described in the definition, and the sole question was whether these activities were within the area of production as defined by the Administrator.

The Act went into effect October 24, 1938, and the Administrator promulgated his first regulation defining "area of production" on October 20, 1938 (R. 187), which definition was amended in April, 1939, and thereafter the Administrator redefined the phrase "area of production" from time to time (R. 188, *et seq.*).

The season for the canning of citrus in Florida runs from approximately November 1 to June 1 of the following year (R. 187), and this suit involves only the seasons of 1938-1939 and 1939-1940. During these two seasons the Respondent operated from November 14, 1938, to May 26, 1939, and from November 16, 1939, to March 30, 1940 (R. 187).

For the two seasons involved there was in force the first definition of the Administrator, an amendment and the second definition. After designating the operations to be performed by the individual, which followed the Act, the Administrator in the first and second definitions defined the territory from which the commodity was obtained and then limited the number of employees in the establishment. In the first definition he provided that the commodity must be obtained from the "immediate locality" and in the second definition from the "general vicinity." In the amendment he said that "immediate locality" shall not include any distance of more than ten miles and that the establishment must be located within a town of twenty-five hundred or less population.

It is admitted that the number of employees of the Respondent exceeded seven (limitation in the definition);

that the establishment of the Respondent is located in a small town of some six hundred and fifty people, and, therefore, it being admitted that the operations were within the exemption and the location of the plant within the exemption, the only points left were the validity of the number of employees limitation and whether the commodities were obtained from within distances covered by the regulation.

At the trial the employer produced evidence showing the distance of hauls of the commodities upon which the employees worked during the two seasons. However, the trial court made no findings as to these hauls because it reached the conclusion that since the Respondent had more than seven employees, it could never be within the area of production and evidently followed the contention of the employees that the word "all" did not mean substantially all but that every piece of fruit had to be obtained within the prescribed circle. The evidence as to the hauls was uncontradicted (R. 180) and the Court of Appeals sets forth these percentages in its opinion (R. 224).

For the benefit of the Court, we now set out the definitions involved, the operating times involved and the facts with reference to obtaining the raw products as follows (showing in italics the portion of the definitions held to be void by the Circuit Court of Appeals):

Definition	Time Involved	Haul Less than 10 mi.	25 mi.	Unkno
	SEASON 1938-1939			
An individual shall be regarded as employed in the "area of production" within the meaning of Section 13(a)(10) in * * * canning of agricultural or horticultural commodities for market * * * if the agricultural or horticultural commodities are obtained by the establishment where he is employed from farms in the immediate locality *and the number of employees in such establishment does not exceed seven* (R. 188).	Nov. 14, 1938 to	97.24%	1.80%	96 100
(Same regulation with following paragraph added:) (e) with respect to perishable or seasonal fresh fruits and vegetables, if he is engaged in canning such products for market in an establishment which is located in the open country or in a rural community, and which obtains all of its products from farms in its immediate locality. As used in this sub-section (e) "open country" or "rural community" shall not include any city or town of 2,500 or greater population according to the 15th United States Census 1930, and "immediate locality" shall not include any distance of	Apr. 19, 1939 Apr. 20, 1939 to	97.24%	1.80%	96 100

efinition	Time Involved	Haul Less than 10 mi.	25 mi.	Unknown
	SEASON 1939-40			
An individual shall be egarded as employed in he "area of production" vithin the meaning of Section 13(a)(10) in * * canning of agri- ultural or horticul- ural commodities for narket * * * (a) f he performs these perations on materials ll of which come from arms in the general vi- inity of the establish- ment where he is em- ployed *and the number of emlpoyees engaged in those operations in that establishment does not exceed seven or* (d) if he performs those operations on materials all of which come from farms in the immediate locality of the establish- ment where he is em- ployed and the estab- lishment is located in the open country or in a rural community. As used in this sub- section (d) "immediate locality" shall not in- clude any distance of more than ten miles and "open country" or "rural community" shall not include any city or town of twenty- five hundred or greater population according to the 15th United States Census, 1940 (R. 189).	Nov. 16, 1939 to March 30, 1940	91.39%	4%	4.61%

Since certiorari does not lie to review evidence or particular facts, *Southern Power Company* v. *North Carolina Public Service*, 263 U. S. 508, 68 L. Ed. 413; *United States* v. *Johnston*, 268 U. S. 220, 69 L. Ed. 925, the sole point presented on this petition for certiorari is whether the Court will grant a writ for the purpose of considering the action of the Circuit Court of Appeals in holding void one phase or portion of the definitions of the Administrator, when in doing so the Court followed its former opinion in *Fleming* v. *Farmers Peanut Company*, 128 F. 2d 404.

IV.

ARGUMENT.

The petitioners pose the question involved in this case as, "Was the Court of Appeals in error in holding ineffective, in the circumstances set forth in the findings of the District Court, the Administrator's definition of 'area of production?'." The Court should readily recognize that this is not a proper statement of the question involved. The Court of Appeals did not hold the Administrator's definitions invalid, but only deleted from a portion of the definitions one element which limited the number of employees in the establishment and which shall hereinafter be referred to as the "number of employees limitation."

A more correct statement of the question would be:

SHOULD THIS COURT BY CERTIORARI REVIEW THE ACTION OF THE COURT OF APPEALS IN HOLDING INVALID THE NUMBER OF EMPLOYEES LIMITATION IN THE ADMINISTRATOR'S DEFINITIONS?

The current problem before this Court is whether the petition for certiorari should be granted.

This Honorable Court in its Rule No. 38-5(b) indicated the character of reasons which would be considered

on a petition for writ of certiorari, and on numerous occasions in reported cases, most of which were prior to the Jurisdictional Act of 1925, referred to these grounds for granting a writ of certiorari.

Discussion of these announcements is wholly unnecessary but in order that we may have these guides clearly in mind in considering the petition in this case, we refer to a few of them.

In *Ex parte Lau Ow Bew*, 141 U. S. 583, 35 L. Ed. 868, the court said that the jurisdiction to review judgments of the Circuit Court of Appeals by certiorari should be exercised sparingly and with great caution.

In *Ex parte Woods*, 143 U. S. 202, 36 L. Ed. 125, this court said that its power to require judgments of the Circuit Court of Appeals to be certified for review could only be properly invoked when a question of gravity and importance is involved.

Similar announcements were made in *Lau Ow Bew* v. *United States*, 144 U. S. 47, 36 L. Ed. 340; *American Construction Company* v. *Jacksonville, Tampa and Key West Railway Company*, 148 U. S. 372, 37 L. Ed. 486, and in *Forsyth* v. *Hammond*, 166 U. S. 506, 41 L. Ed. 1095.

In *Fields* v. *United States*, 205 U. S. 292, 51 L. Ed. 807, the Court, speaking through Mr. Justice Brewer, said:

> "However important the case may be to the applicant, the question involved is not one of gravity and general importance. There is no conflict between the decisions of state and Federal courts, or between those of Federal courts of different circuits. There is nothing affecting the relations of this nation to foreign nations, and indeed no matter of general interest to the public."

In 1916 a large number of petitions for certiorari were being presented and acted upon, and Mr. Justice McReynolds, speaking for the Court in *Furness, Withy and*

Company v. *Yang-Tsze Ins. Assn.*, 242 U. S. 430, 61 L. Ed. 409, clearly pointed out to the bar of this Court the requirements for presenting a petition for writ of certiorari.

With these general principles clearly in mind, let us examine the grounds relied upon by the petitioners in the light of what was involved in this case.

1.

Grounds Relied Upon by Petitioners.

(a)

Novel Problem.

In considering whether a case presents a novel problem, it is not understood that the test is whether some particular facts are novel or have not been presented to this Court, but that the true test is whether the case presents a question of law which is new and unsettled. Applying this test, it clearly appears that the problem is not new because the case presents a question of the power and authority of an administrative agent pursuant to Legislative act. Stated in other words, the question is *"whether the Administrator has only applied the details within the framework of the standards established by Congress."*

This problem has been before the courts, including this Court, on innumerable occasions. As an example of these cases, see:

Currin v. *Wallace*, 306 U. S. 1, 83 L. Ed. 441.

United States v. *Shreveport Grain & Elevator Co.*, 287 U. S. 77, 84, 77 L. Ed. 175.

Manhattan General Equipment Co. v. *Commissioner of Internal Revenue*, 297 U. S. 129, 134, 80 L. Ed. 529.

Panama Refining Co. v. *Ryan*, 293 U. S. 388, 428, 79 L. Ed. 446.

On the other hand it cannot be contended that this case poses a novel problem in that it presents a question

under the Fair Labor Standards Act because this Act has been before this Court on numerous occasions.

United States v. *Darby*, 312 U. S. 100, 85 L. Ed. 609.

Opp Cotton Mills, Inc., v. *Administrator*, 312 U. S. 126, 85 L. Ed. 624.

Williams v. *Jacksonville Terminal Company*, 315 U. S. 386, 86 L. Ed. 914.

Cudahy Packing Company v. *Holland*, 315 U. S. 357, 86 L. Ed. 895.

Kirschbaum v. *Walling*, 316 U. S. 517, 86 L. Ed. 1638.

Overnight Motor Transportation Co. v. *Missel*, 316 U. S. 572, 86 L. Ed. 1682.

Walling v. *A. H. Belo Corporation*, 316 U. S. 624, 86 L. Ed. 1716.

Warren-Bradshaw Drilling Company v. *Hall*, ... U. S. ....., 87 L. Ed. 99.

Walling v. *Jacksonville Paper Company*, ... U. S. ....., 87 L. Ed. 393.

Higgins v. *Carr Brothers Company*, ... U. S. ....., 87 L. Ed. 398.

Overstreet v. *North Shore Corporation*, ... U. S. ....., 87 L. Ed. 423.

(b)

Case Constitutes an Important Precedent in Dealing with Section 13 (a) (10) of the Fair Labor Standards Act.

The prime consideration to be given this case is whether or not it presents a question of national importance, such a point of law as to require the action of this Honorable Court. The Administrator of the Wage and Hour Division evidently did not think this Court should or would take jurisdiction of this sole point because he did not petition for certiorari from the opinion of the Circuit Court of Appeals in *Fleming* v. *Farmers Peanut Company*, 128 F. 2d 404, where the Fifth Circuit first held invalid the limitation in the definitions as to the number of employees and which was the authority followed by the

court in the present case. The Administrator was a party to that suit. It is contended by appellees that *this case* constitutes a precedent. The Farmers Peanut Company case is the precedent.

As a matter of fact, the present suit was pending at the time of the decision of the Circuit Court of Appeals in the Farmers Peanut Company case and the trial court then entered an order with reference to the number of employees limitation, in which he said:

> "Therefore, this Court holds that any such limitation in any of the definitions involved in this case is surplusage and does consider the definitions with such limitation deleted" (R. 39).

This point did not come up again in the case until the trial court entered his conclusions of law holding that this element was properly a part of the definitions.

Although the particular definitions involved in this case have been changed and superseded many times, the present definition still contains a similar limitation providing in effect that an establishment cannot be within the area of production if it has more than ten employees; and therefore, the holdings of the Circuit Court of Appeals of the Fifth Circuit would likewise apply to the present definition as far as that particular portion of same is concerned. However, as pointed out above, the Administrator himself evidently did not think this such an important part of his definition that this Court should be called upon to decide whether he erroneously placed this one element in his definition.

We think the Court should also take into consideration the fact that although the Circuit Court of Appeals struck this one element from the definitions of the Administrator in May of 1942 (Farmers Peanut) he has evidently not considered such action as vitally affecting the other portions of his definitions and has not amended or changed his definitions since that date. His present

definition, containing the number of employees limitation, is set forth Page 191 of the Record, which definition was promulgated on October 6, 1941.

In reaching a decision in this case, the Court of Appeals did not pass upon the validity of the numerous other elements in the involved definitions, but applied the particular facts of this case to these definitions and held that the employees were within the area of production as defined by the applicable definitions, after striking the number of employees limitation. There are numerous elements of the definitions which are not pertinent to the operations of the Respondent, and of course these were not considered or ruled upon in any way by the district court or the appellate court. The Circuit Court of Appeals found it unnecessary to rule upon the portions of the definitions providing that the establishment must be located in open country or in a rural community and obtain all of its products in its immediate locality, nor the definition of "open country" or "rural community" as being a location outside a town of twenty-five hundred or greater population, nor did it pass upon the provisions that an "immediate locality" should not include any distance of more than ten miles.

Petitioners have been unable to locate any announcements of this Court on the question of whether a decision by a Court of Appeals should be reviewed by certiorari if there is a prior decision by the same or other circuits which the current case follows although it would seem that such fact should be given consideration by this Court. In other words if the Circuit Courts of Appeals of this country for a number of years had been in absolute harmony on some point, should this Court exercise its power by granting the petition to review a case on the same settled point? There are no other decisions by circuit courts of appeals on this point, and therefore no conflict or confusion between different circuits.

Congress provided that the Administrator should define area of production. This he did by purporting to lay

down certain rules to determine *area* and, after he had performed this task, he attempted to go further and say that the size of the establishment would likewise determine the area. Although he very loosely and indefinitely defined this surface of the earth where the commodity was produced, he went far beyond any powers given him by Congress by saying that, although he had thus defined the area, it was no longer the area where the commodity was produced if the establishment had more than seven employees.

The number of employees limitation did not apply where the establishment was located in the open country and obtained its commodities within ten miles, did not apply to any of the definitions providing that an employee was within the area of production if he was engaged on a farm and worked on commodities exclusively from that farm, did not apply to dry edible beans nor to Puerto Rican leaf tobacco. If this limitation is so important to a proper defining of area of production, why did the Administrator omit such limitation in these instances?

In his first definition of October 20, 1938, he provided in substance that an employee was within an area of production in certain activities set forth in the Act, if the commodities obtained by the establishment where he was employed came from farms in the immediate locality and the number of employees in the establishment did not exceed seven. In April, 1939, he issued a separate definition for perishable and seasonal fresh fruits and vegetables. This was the twenty-five hundred population and ten-mile haul criterion but no reference whatsoever is included in this definition as to the size of the establishment; i. e., as to the number of employees.

In June, 1939, the Administrator promulgated another regulation which was applicable throughout the second season involved in this case, which provides an alternative; (a) if the materials all come from the general vicinity of the establishment and the number of employees

did not exced seven or (d) if the establishment was located in a town of less than twenty-five hundred and the commodities were obtained from a distance of not more than ten miles. The number limitation was not included in (d) above.

(c)

Conflict and Confusion Among District Courts on Validity of Administrator's Definitions.

Petitioners allege that there is a conflict and confusion involved in the "seventeen decisions" of district courts and likewise state in the Brief that the "seventeen decisions" by the various lower Federal courts are in utter conflict and confusion as to the effectiveness and scope of this exemption. However, these cases are not cited to the court, and the only decision of a district court cited by petitioners in their Brief on the validity of the number of employees is *Silgaro* v. *Port Compress Company*, 45 Fed. Supp. 88. In our research we have found several district court cases (but not seventeen) that have dealt with the definitions of area of production. The reference to this point in the Silgaro case is purely *obiter dictum*. In that case the District Judge reached the conclusion that the definitions of area of production in the June 16, 1939, regulation did not apply to the employer in that case because the employer had more than seven employees and because it was located in a town of more than twenty-five hundred. In other words, he disregarded the definitions entirely and held that under the facts in that case the defendant was within the area of production although the facts showed that ninety per cent of the commodity was produced in four different counties and evidently the other ten per cent at a greater distance. In the opinion, he said:

> "I am unwilling to say that the Administrator, in defining area of production, may not reasonably classify compresses as to number of employees and location."

which was not pertinent to and had nothing to do with his final ruling in the case.

However, conflicts between a decision of a circuit court of appeals and that of a district court or courts are outside the rule which moves this Court to grant the writ solely on the ground of a conflict of decisions. *Jurisdiction of the Supreme Court of United States*, page 576, *et seq.* The above work points out:

> "Maintaining consistency within the circuits is the task of the Circuit Courts of Appeals, which were established for the express purpose of relieving the Supreme Court of supervision over the decisions of District Courts" (Page 577).

In *United States* v. *Constantine*, 296 U. S. 287, 80 L. Ed. 233, 236, this Court said:

> "In its petition for *certiorari* the United States, though admitting the absence of a conflicting decision by the Circuit Court of Appeals of any other circuit, called attention to diverse decisions in the district courts, to the many other cases pending in which action is awaiting authoritative settlement of the question presented herein, to the large amount of money involved, and to the number of persons whose liability will remain uncertain until the dispute is finally settled. The question thus assumes the importance required by Rule 38 and the writ issued accordingly."

From this language it clearly appears that in the Constantine case the writ was not issued solely because of a conflict of decisions among the district courts but the other elements were considered sufficient to give the question importance.

In the first place we are not cognizant of any other suits pending, awaiting authoritative settlement of the question presented herein, other than one other suit pending in the district court in the Southern District of Florida. There is not a large amount of money involved.

nor any large number of persons whose liability will remain uncertain until the dispute is finally settled. If on the other hand the Circuit Court of Appeals had held void all of the definitions involved in their entirety, a question of importance would probably have arisen, but not where the court only eliminated a small portion of the definition and did not pass upon the validity of the balance of the definitions.

The statute of limitations has now barred any claims in Florida that did not accrue prior to three years before this date and, since the citrus industry is seasonal, no claims could have accrued during the off-season. Therefore, all claims are barred that arose prior to the beginning of the 1940 season—about November 15, 1940. In other words, any claims that may have arisen under the definitions of October 20, 1938—immediate locality and seven employees; April 19, 1939—twenty-five hundred population and ten-mile haul; and June 15, 1939—general vicinity and seven employees, are now barred and although we do not purport to know the statutes of limitations of the other states, from the reported cases, we find that they run two or three years in each state. Each of the definitions above referred to has been superseded by subsequent definitions of July 23, 1940—general vicinity and ten employees; March 12, 1941—general vicinity and ten employees and October 6, 1941—general vicinity and ten employees, so far as applicable to the handling or canning of citrus products.

So that the question finally evolves on the present importance of the action of the court in eliminating the employee limitation as it applies to "handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products." The lower court did not pass upon the validity of that portion of the definition which provides that the materials must come "from farms in the general vicinity of the es-

tablishment" which of course is the very heart or substance of the definitions. This point is not before the Court. If it were, then it might be of such importance as to warrant the issuance of the writ.

Another matter bearing upon the question as to whether this is important is the fact that, in September of 1940, the citrus industry including canning agreed with the Administrator of the Wage and Hour Division that beginning October 1, 1940, the industry would comply with the Wage and Hour Act. See Release 1062, September 26, 1940. Until that time the industry was protected under injunction issued by the United States District Court for the Southern District of Florida, in the case of *Lake Wales* v. *Andrews*, and which injunction was about that time dissolved by the Circuit Court of Appeals on procedural questions. The industry rightfully thinking it was exempt from Sections 6 and 7 of the Act, had not generally complied therewith up until that time. It is realized that such an agreement was not binding upon employees but, as pointed out above, any purported claims of employees for services rendered prior to that date have now been barred by the three-year statute of limitations of the State of Florida, Section 9511, Florida Statutes, 1941. As a matter of fact, the 1943 Legislature of the State of Florida passed a one-year limitation on claims for back wages or overtime, Chapter 21892, Acts of 1943.

Some of the district court decisions, involving the definitions of "area of production," are:

Lake Wales Citrus Growers Association v. *Elmer F. Andrews*, (S. D. Fla.) (not published), holding the applicable definition void. This case was later reversed by the Circuit Court of Appeals, 110 F. 2d 653, solely on a procedural question.

Fleming v. *Farmers Peanut Company*, 37 Fed. Supp. 628 (later 128 F. 2d 404), which struck out the number of employees limitation in the definition saying:

> "Both the language and the legislative history of the Fair Labor Standards Act indicate, on the contrary, that the application of the act should not depend upon the number of employees employed by a particular employer, but rather upon the character of the services of the particular employee, and, with particular reference to the exemption contained in Section 13(a)(10), upon the location of the place of employment in relation to the area in which are produced the agricultural or horticultural commodities upon which the services of the employee are performed."

George Byus v. *Traders Compress Company*, W. D. of Oklahoma (not published), holding the definition void but making no particular reference to the number of employees limitation.

Oscar Caliup v. *Terrell Cotton Warehouse Company* (N. D. of Texas) (not published), likewise holding the definition void as to the cotton industry but not particularly passing upon the number of employees limitation.

Walling v. *Yeakley* (District of Colorado) (not published), holding the "general vicinity" element to be reasonable and declaring the operations within the definition without specifically passing upon the validity of the number of employees limitation.

Clark v. *Jacksonville Compress Company*, 45 Fed. Supp. 43, holding the definition void, specifically striking the number of employees limitation.

Redland Foothills Grove v. *Jacobs*, 30 Fed. Supp. 995, denied injunctive and declaratory relief because of lack of parties but announced approval of definitions.

Walling v. *Antonioto Mill and Elevator Company* (D. C. Colorado), which went off solely on question of facts.

Gordon v. *Paducah Ice Manufacturing Company*, 41 Fed. Supp. 980, upholding definitions.

In *Walling* v. *McCracken County Peach Growers Association*, the District Court for the Western District of Kentucky on June 15, 1943, held that the Administrator had exceeded the authority delegated to him by Congress in including in his definition of area of production that the number of employees employed by the establishment must not exceed ten (referring to the current definition), citing with approval the *Farmers Peanut Case, supra.*

The District Court for Puerto Rico in *Rafael Bruno* v. *Hills Bros.*, on August 19, 1943, rendered an opinion in line with our contentions. Copy of opinion being shown in Appendix B.

Judge Underwood in the case of *Devoe* v. *Atlanta Paper Company*, (N. D. Ga., 1941) 40 Fed. Supp. 284, has rejected the contention with reference to the validity of the Administrator's definition of executive and administrative employees, in which definition the Administrator included a provision that the employee must earn a salary of at least $30 a week. Judge Underwood said:

> "Although the Administrator may legally define the term administrative employee with wide discretion within the meaning of such term, he can not go beyond that and add elements which form no part of such conception. In other words, he can not add an element which is not a real incident to executive work. He can not go outside of the meaning of such words and add an element not intended by Congress and virtually legislate to bring in a class of employees not intended. It is clear from the record in this case, and conceded by both sides, that plaintiff was an employee employed in a *bona fide* administrative capacity within the usual meaning of such work and also within the definitions of the Administrator, except with respect to the limitation of $30 a week salary. It might have been wiser for Congress to have classified employees to be covered by the Act upon the basis of their earnings, or to have added with respect to administrative officers the additional requirement of a minimum salary, but it did not do so, and in my

opinion, the Administrator can not, by adding such requirement, which has no relation to the character of the work performed, bring within the scope of the Act a class of employees not intended. The fact that an executive may work for less than $30 per week or even $1 a year does not alter the fact that he is an executive."

V.

CONSTRUCTION OF EXEMPTION.

One contention of the petitioners is that the Court should not have measured the meaning of "area of production" by the dictionary, but should have permitted the Administrator's definition to stand because the Administrator conceived this to be the intent of Congress.

Unless the contrary appears, words of a statute are presumed to be used in their ordinary and usual sense, and with the meaning commonly attributable to them. *DeGanay* v. *Lederer*, 250 U. S. 376, 63 L. Ed. 1042; *U. S.* v. *First National Bank*, 234 U. S. 245, 58 L. Ed. 1298; *Billings* v. *United States*, 232 U. S. 261, 280, 58 L. Ed. 596.

The popular or received import of words furnishes the general rule for the interpretation of public laws. *Woolford Realty* v. *Rose*, 286 U. S. 319, 76 L. Ed. 1128; *U. S.* v. *Goldenberg*, 168 U. S. 95, 42 L. Ed. 594.

However, this Court has likewise announced that the words might not be given their ordinary grammatical construction if the sense be repelled by the intention or if they lead to absurd consequences. For example, see *Marks* v. *United States*, 161 U. S. 297, 301, 40 L. Ed. 706; *Ozawa* v. *United States*, 260 U. S. 178, 67 L. Ed. 199.

We then turn to a consideration of whether the ordinary grammatical construction of the phrase "area of production" is repelled by the intention of Congress or, in other words, if Congress used this phrase but clearly showed in the balance of the Act that it was not to be

construed according to its ordinary meaning. One might spend considerable time in discussing the other provisions of the Act on this question, but it is respectfully submitted there is nothing in the Act or in the Preamble to reach the conclusion that Congress did not mean "area of production" when it uses this phrase. By Section 13(a)(6) it is specifically excepted "any employee employed in agriculture" and after specifically excepting nine different classifications of employees, it added the exemption now under consideration, to-wit: Section 13(a)(10), which was an exemption to any individual performing certain designated operations "within the area of production (as defined by the Administrator)."

The Circuit Court of Appeals in the *Farmers Peanut Company* case, *supra*, said:

> "The word area means a surface, a territory, a region; in this case the territory or region where farm and orchard products are raised."

Congress did not say that in addition to being within the area of production, the individual must work in an establishment of a certain size (to be fixed by the Administrator). To follow the Administrator's construction of "area of production" would indeed lead to an absurdity. We would have a definite area where the product is commercially grown but according to the Administrator no company could physically be located in that area if it had more than seven employees. As said by Judge Waller in his special concurring opinion (R. 230):

> "There is no justification in the Act for restricting the canning or processing plant to any number of employees."

Under the Administrator's definition two plants might be located side by side in the very heart of a producing area—one has seven employees and is therefore entitled to the exemption under the Administrator's definition, but the other plant has eight employees and although located at

the same geographical spot, the Administrator would say that the second one is not within the area.

This Court in *Federal Trade Commission* v. *Raladam Company*, 283 U. S. 643, 75 L. Ed. 1324, adopted the language of Mr. Justice Field in *How Ah Kow* v. *Nunan*, Federal Case 6546, as follows:

> "The statements of supervisors in debate on the passage of the ordinance cannot, it is true, be resorted to for the purpose of explaining the meaning of the terms used; but they can be resorted to for the purpose of ascertaining the general object of the legislation proposed, and the mischiefs sought to be remedied."

The Circuit Court of Appeals of the Fifth Circuit in *Fleming* v. *A. H. Belo Corporation*, 121 F. 2d 207, 213, stated that legislation is compromise and that the view of the proponents and opponents are in fact of little value in the construction of the Act, finding:

> "* * * that it is settled law that statutes must be construed in accordance with the intent of the legislation as expressed in the language of the Act as a whole."

However, if this Court should follow petitioners' contention that the phrase "area of production" is ambiguous and look to the history of the legislation for assistance or if the history of the legislation is studied to try to determine whether the phrase "area of production" should be given its ordinary grammatical construction, it is significant to note that the first concept of "area of production" was in an amendment proposed by Senator Schwellenbach, which read:

> "the term 'person employed in agriculture' as used in this Act, insofar as it shall refer to fresh fruits or vegetables, shall include persons employed within the area of production engaged in preparing, packing or storing such fresh fruits or vegetables in their raw or natural state" (C. R., July 30, 1937, p. 10179).

Following this proposal, a discussion took place on the Senate floor in which the following was said:

"Mr. Connally: The effect of the amendment is to exempt all employees of apple-packing plants; is it not?

Mr. Schwellenbach: If they are engaged in the area of production and so long as apples are in their natural or raw state; yes, sir.

Mr. Connally: Mr. President, I should like to ask the Senator from Washington a question. Would not the effect of his amendment be to exempt all industrial warehouses and packing plants in apple territories? There is no limit. The condition is that they are packing plants, and if they are, they are exempt.

Mr. Schwellenbach: If a packing plant is working upon fresh fruits or vegetables, in their raw or natural state, within the immediate production area, it would be exempt.

Mr. Connally: My understanding is that the largest apple packing plant in the world is located at Winchester, Virginia, right in the heart of a great apple-producing region. That would be exempt, would it not?

Mr. Schwellenbach: If the work done in that plant is as described in the amendment, it would be exempt."

(C. R., July 30, 1937, pp. 10179, 10189, 10181.)

Probably there is no better means of ascertaining what Congress intended to do than to realize that amendments were offered doing exactly what the Administrator had done, to-wit: limiting the number of employees, *and these amendments were rejected.*

In C. R., July 27, 1937, p. 9910, we find that Senator Reynolds suggested an amendment exempting employers of ten or less employees and on July 30, 1937 (C. R., p. 10166), the Senator offered an amendment providing for an exemption of employers employing ten or fewer than ten persons, but on July 30, 1937 (C. R., p. 10191), *this amendment was rejected.*

Another amendment was proposed by Senator Reynolds exempting from the provisions of the Act employers of five or fewer than five persons and *this amendment was likewise rejected* (C. R., July 31, 1937, p. 10266).

From the above it is quite clear that neither the author of the phrase "area of production" nor the Senate had in mind any limitation as to number of employees because the Senate passed the bill on July 31, 1937, with Mr. Schwellenbach's amendment with reference to area of production and after it had *rejected* the idea of any limitation as to number of employees.

It is very clear from the study of the legislative history and the Act itself, that Congress intended that the area of production should mean a geographical area. As to this, there seems to be no dispute on the part of anyone. Therefore, using this test, does the number-of-employees factor injected into the definition bear any reasonable relationship to the geographical area of production wherein the particular agricultural commodity is being produced? For instance, did Congress intend that an employee performing the excepted services on citrus in the very heart of the citrus producing area of Florida be not exempt because he has ten co-employees while an employee having nine co-employees in an establishment on the outer fringe of the area of production would be exempt? Undoubtedly, it was intended by Congress that both such employees should be exempt. The Act specifically exempts "any employee employed in agriculture"; see Section 13(a)(6), then, and in addition thereto, a further exemption was provided under Section 13(a)(10). By the agricultural exemption, services performed by a farmer or on a farm as an incident to farming operations are exempt. Congress intended that there be further exemptions, not only to the farmer or to the person working on the farm but to persons performing certain specified services on agricultural commodities after these commodities left the farm. Clearly there was no intention or desire to exempt such services if they were performed in an in-

dustrial area as distinguished from the production area. Therefore, Congress said that, in addition to the services of the farmer or services on the farm, employees performing certain designated services on the agriculutral commodity would likewise be exempt if those services were performed within the "area of production." It is not conceivable that there was ever any idea that the Administrator would so delimit the definition as to exempt the same labor that was included under the agricultural exemption. It was never thought that the Administrator would attempt by such a narrow definition to force a small packing house to limit the volume of the agricultural commodity handled so as to use fewer employees or to increase its costs to be borne by the farmer.

During the short time the Act has been in force and effect, the Administrator has issued six different definitions or amendments defining "area of production." Admitting that Congress placed upon his shoulders a difficult task, it is certainly not conceded that "area of production" is indefinable. Attached hereto as an appendix will be found the several definitions or amendments. A casual reading of these regulations will show clearly that the Administrator has at all times approached the problem with a definite idea of delimiting the exemption granted by Congress to the "nth" degree. They clearly show there is and has been no effort to carry out the legislative intent but clearly an effort to limit the exemption to the fewest possible number of persons.

The regulations can not be arbitrary or capricious and the administrative agent is only to supply the details within the framework of the standards established by Congress. *Currin* v. *Wallace*, 306 U. S. 1, 83 L. Ed. 441.

United States v. *Shreveport Grain and Elevator Company*, 287 U. S. 77, 77 L. Ed. 175, 179. This Court quotes from *U. S.* v. *Hartwell*, 6 Wall. 385, 396, 18 L. Ed. 830, 832, as follows:

"If the language be clear, it is conclusive. There can be no construction where there is nothing to construe."

In that case, committee reports were urged but the court said:

"In proper cases such reports are given consideration in determining the meaning of a statute, but only where that meaning is doubtful. They cannot be resorted to for the purpose of construing a statute contrary to the natural import of its terms."

In *Manhattan General Equipment Company v. Commissioner of Internal Revenue*, 297 U. S. 129, 80 L. Ed. 529, 531, this court say:

"The power of an administrative officer or board to administer a federal statute and to prescribe rules and regulations to that end is not the power to make law—for no such power can be delegated by Congress—but the power to adopt regulations to carry into effect the will of Congress as expressed by the statute. A regulation which does not do this, but operates to create a rule out of harmony with the statute, is a mere nullity. *Lynch* v. *Tilden Produce Co.*, 265 U. S. 315, 320-322, 44 S. Ct. 488, 68 L. Ed. 1034-1036; *Miller* v. *United States*, 294 U. S. 435, 439, 440, 55 S. Ct. 440, 79 L. Ed. 977, 980-981, and cases cited. And not only must a regulation, in order to be valid, be consistent with the statute, but it must be reasonable. *International R. Co.* v. *Davidson*, 257 U. S. 506, 514, 42 S. Ct. 179, 66 L. Ed. 341, 346."

The Supreme Court has also said of regulations that they "become, in deed, binding rules of conduct, but they are valid only as subordinate rules and when found to be within the framework of the policy which the Legislature has sufficiently defined." *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, 427-429, 79 L. Ed. 446, 463, 55 S. Ct. 241, 252.

We do not question that portion of the Administrator's definition of "area of production" which requires that the

exempt operations be performed upon "materials, all of which come from farms in the general vicinity of the establishment," where the employee is employed (although we do not think that this portion of the definition lays down a guide much clearer than that furnished by the language of Congress), but only that portion of the definition which limits the exemption to an employee employed in an establishment which does not employ more than seven employees.

The word "production" is used in connection with agricultural and horticultural commodities and the reference in Section 13(a)(10) is to the production of such commodities. The "area of production" is the area in which the farms are located on which each commodity is produced. In general the word "area" means any plane surface or surface space. In this particular connection it means a portion of the surface of the earth. There seems to be no justification for giving it any other meaning, and in the particular connection in which it is used it means that portion of the surface of the earth within which the farms are located on which the agricultural or horticultural commodity in question is produced.

Within the power given by Congress, the Administrator might properly be allowed by the courts a broad latitude, even though the area ascertained by him to be that in which a particular commodity is produced may not exactly correspond with the court's idea as to that area. Clearly, however, he would have no power and was not intended by Congress to have the power to make any definition which would exclude from the Congressional exemption an employee conclusively proved to be engaged in exempt operations in the very heart of the producing area.

To uphold the Administrator's limitation based upon the number of employees is to say that Congress intended that the Administrator could nullify the very exemption it was granting. In other words, it would be

the same as saying that Congress intended to empower the Administrator to say that an employee engaged in exempt operations in the area of production was not exempt from the Act, although Congress expressly said that he was. The Administrator's contentions in this respect boil themselves down to the ridiculous proposition that Congress said in Section 13(a)(10) that it thought the operations there specified, if performed in the area of production, should be exempt, but that the Administrator could refuse to exempt these operations if he saw fit. Nothing is more clear than that the Administrator has sought to do exactly this.

Perhaps it is unnecessary to cite any authority to show that the definition of the Administrator is not authorized by a grant of the power to define "area of production," in view of the clear proof in the case at bar that the employees in question are engaged in exempt operations in the heart of the citrus producing area. However, we would like to call attention to the decision in the case of *Lukens Steel Company* v. *Perkins*, (Ct. of App. D. C., 1939) 107 F. 2d 627, in which it was held that the word "locality" could not, under the context of the statute there involved, be defined by an administrative agent to include "an area consisting of 13 states, a portion of the 14th, and the District of Columbia as well." The statute there involved was the Public Contracts Act of June 30, 1936, 41 U. S. C. A., Sec. 35, *et seq.*, which required that in certain contracts entered into with the United States there should be included a stipulation that the contractor would pay all persons employed by him in carrying out the contract "not less than the maximum wages as determined by the Secretary of Labor to be the prevailing maximum wages for persons employed in similar work or in the particular or similar industries or groups operating in the locality in which the materials, supplies, articles or equipment are to be manufactured or furnished under said contract." The Court said:

"It is true that the word *locality* is one of somewhat indefinite meaning. Still, its indefiniteness has certain well recognized limits in common meaning and usage, which exclude and forbid the interpretation placed upon the word by the appellees in their determination. It is true that within the proper limits of the meaning of *locality*, the Secretary is required by the statute to exercise judgment and discretion; but the determination in this case goes so far beyond any possible proper application of the word as to defeat its meaning and to constitute an attempt arbitrarily to disregard the statutory mandate. The rule therefore—that where the adoption of one of several possible interpretations of a doubtful statute involves the exercise of judgment and discretion, upon which the duty of an officer to perform a particular act depends, the courts cannot control the exercise of that discretion—has no application in the present case."

This decision was reversed by the Supreme Court of the United States, 310 U. S. 113, 60 S. Ct. 869, on the ground that no justiciable controversy was presented, but the Supreme Court did not pass upon the question decided by the Court of Appeals for the District of Columbia as to the actual authority of the Secretary of Labor to define the word "locality" as she did. We submit that this decision is correct and thoroughly in accord with legal precedents as applied in a justiciable controversy such as the case at bar.

The case of *Gray* v. *Powell*, 314 U. S. 402, 411, 86 L. Ed. 309, 62 S. Ct. 326, is cited by petitioners for the proposition that the validity of the Administrator's definition cannot be reviewed does not support that position. In that case the Act provided that any person who believed that his commerce in coal was not subject to the provisions of Section 4 of the Bituminous Coal Act of 1937 might file an application for exemption and have a hearing before the Commissioner on the exemption. It further provided that any person aggrieved by an order of

the Commission could appeal to the courts but that "the finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive." The question involved in the case was whether the particular party seeking exemption was a "producer" within the meaning of the Act. The Commission held that under the evidence, which was uncontradicted, the applicant was not a producer and therefore was not exempt. The Court said:

> "In a matter left specifically by Congress to the determination of an administrative body, as the question of exemption was here, §§4—II(1) and 4-A, the function of review placed upon the courts by §6(b) is fully performed when they determine that there has been a fair hearing, with notice and an opportunity to present the circumstances and arguments to the decisive body and an application of the statute in a just and reasoned manner."

The Court then went on to discuss the evidence and to hold that it supported the decision of the Commission. Here the Court recognized what has always been true, that the ruling of the particular administrative body must be an *application of the* statute and that it must be *just and reasoned.* In the case at bar we do not have a situation where there was afforded either the employer or his employees an opportunity to be heard as to whether or not his operations were exempt from the Act, but on the other hand we have a general definition published *ex parte* containing a limitation which is no *application of the statute.*

Nor does the case of *U. S.* v. *Bush & Co.*, 310 U. S. 371, 84 L. Ed. 1259, 60 S. Ct. 944, support the position of petitioners. In that case the Court was dealing with the validity of a change in customs rates by a proclamation of the President under Section 336(c) of the Tariff Act of 1930, 19 U. S. C. A., Sec. 1336(c), which provided that the President "shall by proclamation approve the rates of duty and changes in classification and in basis of value

specified in any report of the Commission under this Section, if in his judgment such rates of duty and changes are shown by such investigation of the Commission to be necessary to equalize such differences in costs of production." The party attacking the Presidential proclamation contended that the Tariff Commission had used an erroneous basis for determining the rate of foreign exchange necessary to be considered in arriving at the basis for the changes in rates and that the Presidential proclamation changed the rates in accordance with the report of the Commission arrived at upon this erroneous basis. The Court pointed out that the Commission was acting only as advisor to the President in making its report and that under the express provisions of the Act the President was authorized to change the rates *if in his judgment* the changes were necessary to equalize the differences in the domestic and foreign costs of production. It was pointed out that the powers so entrusted to the President were not essentially different in kind from those which have been granted him under the Tariff Acts for well over a century and that "the statute constitutes him the sole and exclusive judge of the existence of those facts," which were the basis of the exercise of the discretionary power expressly granted to him. It is clear from this decision that the President was acting under the terms of an expressly delegated power and in pursuance to the power so delegated; whereas, in the instant case the Administrator has assumed to himself a power not delegated by the authority to define "area of production." The Fair Labor Standards Act did not purport to give the Administrator the discretionary power as to whether or not he would define the words "area of production" nor did it give him the power to define it and then to provide that it should not apply to employees engaged in plants having more than seven employees.

All of the cases to the effect that Congress may delegate the power to issue regulations to have the force and

effect of law clearly show that the exercise of the power delegated must, in order to be valid, be within the policy expressed by Congress in the enactment of the law. If regulations issued pursuant to Congressional authority run counter to the terms or policy of the statute, they are void. See especially *U. S. v. Shreveport Grain and Elevator Co.*, 287 U. S. 77, 77 L. Ed. 175, 53 S. Ct. 42; *U. S. v. Grimaud*, 220 U. S. 506, 55 L. Ed. 563, 31 S. Ct. 480. The same authorities indicate that it is only where such regulations come within the scope of the Congressional authorization that "the courts have consistently refused to interfere with legislative judgment entrusted to administrative officers."

VI.

FINDINGS OF LOWER COURT.

There is no real conflict in any findings of fact between the District Court and the Court of Appeals in this case. The District Court failed to realize separate seasons and separate definitions were involved and did not make a specific finding as to the locality where the fruit was obtained. The trial court held as a mattor of law that the number of employees limitation was valid, and this decided the point involved—definitely placed the employee outside the area of production and therefore not entitled to exemption. The Court of Appeals differed in this conclusion of law and then made findings as to the locality from which the commodity was obtained and applied the particular facts of the case.

This Court in *Continental-Illinois v. C. R. I. & P. R. Co.*, 294 U. S. 648, 79 L. Ed. 1110, held that the concurrent findings of both courts below should be accepted as conclusive unless clearly erroneous, citing numerous authorities.

VII.

ADMINISTRATOR'S HEARINGS.

Petitioners in their Brief refer to the record of the administrative hearings by his representative, Merle D. Vincent, to ascertain the factual basis for such definitions. Mr. Vincent's findings and recommendations were rendered on March 14, 1939. He points out that the scope of the hearings was "what, if any, amendment should be made of Section 536.1 or Section 536.1 of the regulations issued under the Fair Labor Standards Act of 1938 in respect with the definition of 'area of production' for fresh fruits and vegetables." Then he emphasized the fact that the breadth of the problem was reflected in the widely representative capacity of the persons who appeared at the hearing. His findings consist of approximately thirty-four pages and his recommendations of one page.

There is contained in the findings:

> "In Florida, where the citrus acreage is spread over a large part of the state, average hauls are frequently longer and maximum hauls go up to two hundred and fifty miles in some cases."
>
> "In Florida, the normal, rather direct movement from farm to nearby packing house is somewhat distorted in some instances by a choice of packing house with reference to further shipment."
>
> "The important Florida citrus canning industry, operating for about six months a year, procures part of its citrus direct from the groves and part from packing houses. There are only fifty citrus canneries in the state in comparison with three hundred and fifty packing houses; accordingly some fruit is hauled to the canneries over two hundred miles and the average haul is longer than the haul to the packing house."
>
> "While there may be some home canning with equipment operated by 7 or fewer persons, it is

the opinion of all witnesses that any commercial cannery must employ a greater number of persons. The actual number of employees varies greatly" (This is the only reference to the number of employees limitation).

"The definition to be adopted must therefore be directed toward the relation of the plant to the farmer with the three qualifications of (1) geographical immediacy, (2) rural character of the community in which the plant is situated, and (3) relation of cost factors to the farmer's income for his produce."

His recommendations are that Section 536.2 of the Regulations issued under the authority of Section 13(a)(10) of the Fair Labor Standards Act of 1938 be further amended by the addition thereto of the following:

"(e) With respect to perishable or seasonal fresh fruits and vegetables, if he is engaged in handling, packing, drying, storing, preparing in their raw or natural state, or canning such products for market in an establishment which is located in the open country or a rural community, and obtains its products from farms in its immediate locality and performs such operations for the account of the grower of such products.

"As used in this sub-section (e) 'open country or a rural community' shall not include any city of twenty-five thousand or greater population according to the 15th United States Census, 1930, and 'immediate locality' shall not include any distance more than fifty miles, provided, however, that if the establishment is located in a somewhat larger city or obtains the products from a somewhat greater distance, and the nature of the business and the type of operations are similar to those in competitive establishments included within the 'area of production' under this sub-section, the Administrator may determine that such establishment is also in the 'area of production' on the basis of an individual application.'

With these recommendations before the Administrator, he issued his regulation of April, 1939, changing the rec-

ommendation of the twenty-five thousand population to twenty-five hundred and cutting down the recommendation of the fifty-mile haul to ten miles.

There is a line of authorities holding in effect that it will be presumed that the administrative agent made the necessary findings of fact to warrant the issuance of the regulation. This is not true in this case because (1) the number of employees element in the limitation is contrary and in direct conflict with the language of Congress—with the framework in the established standards and (2) the record of the hearings shows conclusively that no evidence was taken on this point and no findings made.

Before concluding there are one or two points set forth in Petitioner's Brief which really need no answer, but we call them to the attention of the Court.

Petitioners devoted part of their brief to the portion of the regulation with reference to cities of twenty-five hundred or less and the ten-mile haul. The validity of this regulation was not passed upon by the Circuit Court of Appeals.

Petitioners likewise call attention to the fact that the Court of Appeals stated that:

> "* * * a distance of twenty-five miles in this day of highly developed travel facilities is not beyond the range of usual farm travel" (R. 227);

that the District Court said:

> "An appreciable portion (of the commodities or materials processed) came from a distance beyond the range of usual farm travel" (R. 192).

In the answer this Respondent alleged "the result of this integrated development of citrus is that the usual range of farm travel is great, many producers owning grove properties more than 100 miles distant, but belonging to a cooperative or customarily dealing with a

single independent handler in proximity to one of such grove properties, and producers and handlers alike are competitors and neighbors, meeting in common markets and under common conditions to bid against one another for a single labor supply or a single price or to exchange solutions of their common problems though their groves or their establishments may be more than 100 miles apart" (R. 14). *The Petitioners stipulated that the allegations were true and correct* (R. 144).

Petitioners take the position that, if the Administrator's definitions are invalid, then no exemption exists under Section 13(a)(10). Neither of the lower courts held the definitions invalid *in toto*, and therefore, such contention is inapplicable in this case.

> "Every part of a statute must be construed in connection with the whole so as to make all parts harmonious, if possible, and give meaning to each." *Washington Market Company* v. *Hoffman*, 101 U. S. 112, 116, 25 L. Ed. 782; *Ex parte Public National Bank*, 278 U. S. 104, 73 L. Ed. 202; *Ruff* v. *Gay*, 67 F. 2d 684; *Jones* v. *York County*, 47 F. 2d 837, and *Berry* v. *Atlantic Greyhound Lines, Inc.*, 114 F. 2d 255.

Applying these general principles, it naturally follows that the Court must give some meaning to Section 13(a)(10) and the only logical meaning is that there must be exemption from the Wages and Hours Provision of the Act. This exemption is to those who are performing the specified services within the "area of production." Congress instructed the Administrator to define "area of production." If any court should hold his entire definition invalid, then there is no definition of "area of production" and the Court must apply the exemption to the stated facts in the particular case.

VIII.

CONCLUSION.

It is respectfully submitted to the Court that the striking of the number of employees element from the definition of the Administrator by the Circuit Court of Appeals does not present a case in which the powers of this Court should be exercised in granting a writ of *certiorari*. The question does not fall within any of the considerations set forth in Rule 38 of this Court nor within the grounds relied upon by Petitioners.

Respectfully submitted,

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APPENDIX A.

Definitions of Area of Production.

(1) The Administrator promulgated on October 20, 1938, Section 536.2 of the Regulations, purporting to define "area of production" as follows:

> "Section 536.2 'Area of Production' As Used in Section 13 (a) (10) of the Fair Labor Standards Act. An individual shall be regarded as employed in the 'area of production' within the meaning of Section 13 (a) (10), in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products,
>
> (a) if he is engaged in such work on a farm and on agricultural or horticultural commodities produced exclusively on such farm, or
>
> (b) if the agricultural or horticultural commodities are obtained by the establishment where he is employed from farms in the immediate locality and the number of employes in such establishment does not exceed seven."

(2) That regulation remained in effect through April 19, 1939, when (following a series of administrative hearings,) he promulgated, effective April 20, 1939, an additional paragraph to said Regulation 536.2, as follows:

> "(e) with respect to perishable or seasonable fresh fruits and vegetables, if he is engaged in handling, packing, storing, drying, preparing in their raw or natural state, or canning such products for market in an establishment which is located in the open country or in a rural community and which obtains all of its products from farms in its immediate locality. As used in this subsection (e) 'open country' or 'rural community' shall not include any city or town of 2,500 or greater population according to the 15th

United States Census, 1930; and 'immediate locality' shall not include any distance of more than 10 miles."

(3) On June 15, 1939, effective June 17, 1939, the Administrator again amended said Regulation, as follows:

"An individual shall be regarded as employed in the 'area of production' within the meaning of Section 13 (a) (10), in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products:

(a) if he performs those operations on materials all of which come from farms in the general vicinity of the establishment where he is employed and the number of employees engaged in those operations in that establishment does not exceed seven, or

(b) with respect to dry edible beans, if he is so engaged in an establishment which is a first concentration point for the processing of such beans into standard commercial grades for marketing in their raw or natural state. As used in this subsection (b), 'first concentration point' means a place where such beans are first assembled from nearby farms for such processing but shall not include any establishment normally receiving a portion of the beans assembled from other first concentration points, or

(c) with respect to Puerto Rican leaf tobacco, if he is engaged in handling, packing, storing, and drying such tobacco for market in an establishment which is a first concentration point for such tobacco. As used in this subsection (c), 'first concentration point' means a place where such tobacco is first assembled from nearby farms for such preparation for market but shall not include any establishment normally receiving a portion of the tobacco assembled from other concentration points, nor any establishment operated by a manufacturer for the preparation of tobacco for his own use in manufacturing, or

(d) if he performs those operations on materials all of which come from farms in the immediate locality of the establishment where he is employed

and the establishment is located in the open country or in a rural community. As used in this subsection (d), 'immediate locality' shall not include any distance of more than ten miles and 'open country' or 'rural community' shall not include any city or town of 2500 or greater population according to the 15th United States Census, 1930."

(4) On July 23, 1940, effective October 1, 1940, the Administrator again amended said Regulation as follows:

"II. An individual shall be regarded as employed in the 'area of production' within the meaning of Section 13 (a) (10), in handling, packing, storing, drying, preparing in their raw or natural state, or canning of perishable or seasonal fresh fruits or vegetables for market:

if he performs those operations on materials all of which come from farms in the general vicinity of the establishment where he is employed and the number of employees engaged in those operations in that establishment does not exceed ten."

(5) On March 12, 1941, effective April 1, 1941, the Administrator again amended said Regulation as follows:

"An individual shall be regarded as employed in the 'area of production' within the meaning of Section 13 (a) (10) in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products;

(a) If he performs those operations on materials all of which come from farms in the general vicinity of the establishments where he is employed and the number of employees engaged in those operations in that establishment does not exceed ten, or

(b) with respect to dry edible beans, if he is so engaged in an establishment which is a first concentration point for the processing of such beans into standard commercial grades for marketing in their raw or natural state. As used in this sub-section (b), 'first concentration point' means a place where such

beans are first assembled from nearby farms for such processing but shall not include any establishment normally receiving a portion of the beans assembled or from other first concentration points, or

(c) With respect to Puerto Rican leaf tobacco, if he is engaged in handling, packing, storing, and drying such tobacco for market in an establishment which is a first concentration point for such tobacco. As used in this sub-section (c), 'first concentration point' means a place where such tobacco is first assembled from nearby farms for such preparation for market but shall not include any establishment normally receiving a portion of the tobacco assembled from other concentration points, nor any establishment operated by a manufacturer for the preparation of tobacco for his own use in manufacturing."

(6) On October 6, 1941, effective January 5, 1942, the Administrator again amended said Regulation, as it is now currently in effect, as follows:

"An individual shall be regarded as employed in the 'area of production' within the meaning of Section 13 (a) (10) in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market; or in making cheese or butter or other dairy products:

(a) if he performs those operations on materials all of which come from farms in the general vicinity of the establishment where he is employed and the number of employees engaged in those operations in that establishment does not exceed ten, or

(b) with respect to dry edible beans, if he is so engaged in an establishment which is a first concentration point for the processing of such beans into standard commercial grades for marketing in their raw or natural state. As used in this subsection (b), 'first concentration point,' means a place where such beans are first assembled from nearby farms for such processing but shall not include any establishment normally receiving a portion of the beans assembled from other first concentration, or

(c) with respect to Puerto Rican leaf tobacco, if he is engaged in piling, bulking, or otherwise handling unstripped tobacco for market in an establishment which is a first concentration point for such tobacco; provided that employees engaged in stripping tobacco or engaged in piling, bulking, or otherwise handling stripped tobacco shall not be deemed to fall within this definition. As used in this subsection (c), 'first concentration point' means a place where such tobacco is first assembled from nearby farms for such preparation for market but shall not include any establishment normally receiving a portion of the tobacco assembled from other concentration points, nor any establishment operated by a manufacturer for the preparation of tobacco for his own use in manufacturing."

APPENDIX B.

In the District Court of the United States for Puerto Rico
Rafael Bruno et als, Plaintiffs vs. Hills Bros. Co. of Puerto Rico Defendant Civil No. 2210

Opinion.

Defendant is a corporation engaged in farming in Puerto Rico and in the packing and canning of citrus fruit and in the processing of certain other fruits and vegetables. This suit was brought by its employees for wages, overtime and liquidated damages alleged to be due them by reason of the failure of defendant to comply with the provisions of the Fair Labor Standards Act.

The facts in this case were not in dispute and were set out in considerable detail in a Stipulation of Facts dated June 12, 1943 and filed with the Court at the opening of the trial on June 14, 1943. The plaintiffs rested on that Stipulation and the defendant produced some additional evidence relating to the nature of the canning business in Puerto Rico and on other points in the case. The pertinent facts to the decision of this case are set out in the Findings of Fact filed this day.

In addition to farming, the defendant did a number of operations on different fruits and vegetables, some of which were exclusively from its own farms and others of which were purchased from farms in the general vicinity of defendant's canning and packing plant.

During the period covered by the Complaint, the defendant engaged periodically in the canning and packing of grapefruit, all of which came from its own farms, except for a period of twelve days in the year 1940, during which period it purchased some grapefruit from other farmers in the general vicinity; in the canning of pineapples purchased from other farmers; in the canning of

gandules (pigeon peas) purchased from other farmers; in the drying and shredding of coconut purchased from other farmers and in the curing of citron, all of which came from the farms of defendant itself except for a quantity purchased from one other grower.

Under the Stipulation filed, the only question to be determined was whether or not the employees of defendant, during the period covered by the Complaint, fell within the terms of the federal Fair Labor Standards Act of 1938. The question of the amount due, if any, to the plaintiffs by the defendant on account of unpaid wages and liquidated damages, was left pending as a result of the primary determination on coverage.

In the first place, except as to grapefruit and citron, there was no proof offered to show that any of the fruit and vegetables processed by defendant went into commerce as alleged in the Complaint. The questions stressed by both plaintiffs and defendant in the Stipulation and argument related to the area of production exemption in Section 13-a-10 of the Fair Labor Standards Act of 1938, and the definition of "agriculture" in Section 3(f) of the Act and the corresponding exemption in Section 13-a-6. These sections referred to, read as follows:

> "Sec. 3. . . .
>
> "(f) 'Agriculture' includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market."

"Sec. 13. (a) The provisions of Sections 6 and 7 shall not apply with respect to . . . . (6) any employee engaged in agriculture . . ."

"Sec. 13. (a) The provisions of sections 6 and 7 shall not apply with respect . . . . (10) to any individual employed within the area of production (as defined by the Administrator) engaged in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products."

As regards canning and packing of grapefruit and the curing of citron which are raised by defendant on its own farms, it seems clear to me that the provisions of Section 3(f) and of Section 13-a-6 quoted above, relieve the defendant of any liability under the Act, except as to the period of twelve days during which the defendant canned grapefruit purchased from other farmers and the period during which it cured citron purchased from one other farmer. So far as the work done on its own products is concerned, this was work "performed by a farmer" on its own farm as an incident to its farming operations and consisted in the preparation of these products for the market. Such operations are specifically excluded from the Act. In any event if such operations were not exempt by Section 13(a)(6) they were certainly exempt under Section 13(a)(10) being clearly within the area of production under any valid definition.

There was a period of twelve days, from February 28, 1940 to March 13, 1940, when defendant canned some grapefruit purchased from others. This fruit came almost entirely from Sabana Llana, the same ward of Rio Piedras in which defendant's canning plant is located and from Bayamón, a municipality formerly contiguous to Rio Piedras, now separated by the municipality of Guaynabo formed from parts of Rio Piedras and Bayamón. (Paragraph 1 of Stipulation and Exhibit A). While such op-

erations on purchased grapefruit would not fall within the exemption of 13-a-6 and 3(f), the grapefruit came from the general vicinity of the defendant's farm and place of business (in fact from the immediate locality, and in view of the conclusions to which I have arrived in regard to the Administrator's definition of "area of production", such canning was exempt under Section 13-a-10. The same may be said in general as to citron purchased from another farmer and cured by defendant, it came from the general vicinity of defendant's farm where it was brought to be cured.

As regards the processing operations of the defendant performed on agricultural and horticultural products purchased from other farmers (pineapples, peas and coconuts) the question arises as to whether such operations were exempt from the Act under Section 13-a-10. This section states an exemption to an individual employed in the operations in which defendant was engaged, but in such case the Act requires that in order to be exempt the individual must be employed within the area of production as defined by the Administrator.

The Administrator has apparently found considerable difficulty in defining "area of production", since this definition has been changed several times. The first definition dated October 20, 1938, defined "area of production" to require that the men be employed on a farm and at work on commodities produced exclusively on that farm or if the products came from farms in the immediate locality that the number of employees in the establishment did not exceed seven. An amendment immaterial here was made December 21, 1938. Then, on April 19, 1939, an additional definition was made with respect to perishable or seasonable fresh fruits and vegetables, by adding paragraph (e) and this paragraph required that the establishment be in the "open country" or "rural community" not including any city or town of 2,500 or more population in 1930 and that the perishable or seasonable

products come from the "immediate locality" of the establishment, not over ten miles. There was no limitation on number of employees in the processing of perishable or seasonable fruits and vegetables. On June 17, 1939, the basic definition was changed from "immediate locality" to "general vicinity of the establishment" but the number of employees was still limited to seven. An alternative definition referred to farms in the immediate locality, where the establishment was located in the open country or in a rural community. The special paragraph relating to perishable fruits and vegetables was eliminated, but the same provisions were made applicable generally in the alternative definition.

On July 23, 1940 (effective October 1st, 1940), a further amendment was made and again on March 12, 1941 (effective April 1st, 1941) a still further change was made retaining the words "general vicinity" and placing the number of employees at ten or less. The last amendment was made October 6, 1941 (effective January 5, 1942).

The changes made from time to time in the Administrator's efforts to define "area of production" can perhaps best be seen from the following statement in tabular form:

Regulations Section 13-a-10	Processing of Fruit and Vegetables Done by Deft.
October 20, 1938 to April 19, 1939.	
a) If employee is working on a farm and on commodities produced exclusively on such farm, or	Feb. 20, 1938 - Jan. 6, 1939, canned pigeon peas.
b) If the commodities come from farms in the immediate locality and the number of employees does not exceed seven. (Amendment December 22, 1938 not material here).	Feb. 28, 1939 - Mar. 26, 1939, canned own grapefruit.

April 20, 1939 to June 15, 1939.	
a) Same.	
b) Same.	
c) Refers to dry beans.	
d) Refers to Puerto Rican leaf tobacco.	
e) Perishable or seasonable fresh fruit and vegetables	
Employee must be employed in an establishment located in the open country or rural community and products must come from farms in the immediate locality. Rural community must not include town of over 2,500 population and immediate locality does not include any distance over ten miles.	

June 16, 1939 to July 23, 1940 (Effective October 1st, 1940).	Feb. 28, 1940 - March 13, 1940, canned purchased grapefruit.
a) If employee is working on product which come from farms in the **general vicinity** and number of employees does not exceed seven, or	Feb. 16, 1940 - Apr. 6, 1940, canned own grapefruit.
	May 17, 1940 - August 9, 1940, canned pineapples.
	Jan. 29, 1940 - Feb. 21, 1940, canned pigeon peas.
d) If working on products from the immediate locality and the establishment is located in the open country or in a rural community.	Mar. 21, 1940 - Mar. 30, 1940, canned pigeon peas.
	June 5, 1940 - Oct. 24, 1940, processed coconut

Regulations Section 13-a-10	Processing of Fruit and Vegetables Done by Deft.
October 1st, 1940 to March 12, 1941 (effective April 1st, 1941)	Mar. 7, 1941 - July 11, 1941, canned pineapples.
Same definition in general, but reference to perishable fruits and vegetables again inserted with the same provisions as before except that the number of permissible employees has been raised to ten.	Feb. 7, 1941 - Apr. 4, 1941, canned own grapefruit.
	Dec. 22, 1940 - Mar. 12, 1941, canned "gandules".
	Oct. 25, 1940 - Nov. 20, 1940, processed coconuts.
	Dec. 11, 1940 - Dec. 25, 1940, processed coconuts.
	Jan. 21, 1941 - Feb. 5, 1941, processed coconuts.
	Between Oct. 25, 1940 - July 22, 1941, but not continuously, cured purchased citron.

April 1st, 1941 to date	
a) Definition remains general vicinity, but number of employees permissible raised to ten. References to perishable fruits and vegetables abandoned	Mar. 12, 1941 - Sept. 4, 1941, processed coconuts.
	The periods when defendant was curing its own citron raised on its own farms, are not specified.

The Administrator twice put in special provisions for perishable fruits and vegetables and twice abandoned them and on October 1st, 1940 had abandoned the idea of an alternative definition relating to rural communities or towns of not over 2,500 population under the 1930 Census as well as the ten-mile limit in the alternative definition.

Admittedly the defendant employed more than seven and more than ten workers in its establishment in the work done on fruit and vegetables purchased from other farmers, so that if the Administrator's definition is valid in its entirety and if the defendant were otherwise liable, it would not be exempt from the application of the Act to its employees under Section 13-a-10.

The Administrator was given the power to define "area", to make ineffective the intent of Congress. To change the statute nor under the guise of definition of "area," to make ineffective the intent of Congress. To define "area" in terms of number of employees seems to me a clear extra-limitation of his power by the Administrator. Area of production has nothing to do with number of workmen at a cannery or dairy or other establishment of that general nature. The word "area" means a surface or extent of territory, in this case the region or territory where the fruit or vegetables are produced. (*Fleming* vs. *Farmers Peanut Co.*, 128 Fed. (2) 404; *Holly Hill Fruit Products, Inc.* v. *Addison*, (C. C. A. 5) June 24, 1943.)

It is clear from a reading of the Fair Labor Standards Act of 1938 in its entirety that Congress not only intended to exempt farmers from the operation of the Act, but also to exempt them from the immediate effects of that Act. It intended to refrain and did refrain from adding to the farmer in the preparation and marketing of his crop the burdens or expenses which might be caused by the Act, and it is my opinion that Congress intended for the farmer to be able to reach his convenient and available markets and sell his products there without being burdened by the

Act. To allow the Administrator by definition to restrict the exemption to canning or processing plants employing seven or less or ten or less employees, would be to allow the Administrator to thwart the express will of Congress, and that part of the Administrator's definition of "area of production" has no basis either in law or in ordinary reason.

It also seems clear to me that the restriction embodied at times in the Administrator's definition to the effect that the establishment must be located in an open country or in a rural community and that the area must not include a town of over 2,500 population according to the 1930 Census, is invalid. Whether the establishment is in a city or in a rural community and whether that community contains a town of over 2,500 population, has nothing to do with area of production, and it is only the area of production that the Administrator is allowed to define.

It has been suggested that if the Administrator's definition is invalid, there is no definition of "area of production" and hence no exemption. But the same statement might be made as to this as I have made above in regard to the thwarting of the will of Congress by a limitation of the number of employees. It is inconceivable that the intention and will of Congress as expressed in the Act could be upset either by the failure of the Administrator to make any definition at all, or by his making an invalid definition. But we are not faced with a situation where the Administrator has failed entirely to define the area of production in accordance with the law. A part of his definition stated at times that the exemption shall apply if the materials come from farms in the immediate locality of the plant and not over ten miles and later stated that it would apply if the products came from the general vicinity of the establishment where the workmen are employed and while this latter may not be a precise definition, it is a legitimate and valid defining of "area". I am, therefore, constrained to hold that that part of the administrative definition of "area of produc-

tion" under Section 13-a-10 which limits the exemption to establishments employing seven or less (later ten or less) workmen, is not in accord with the Act and is void, as is also the limitation regarding location in open country or in a rural community. The remaining part of the definition in each case, i. e., that the products come from the immediate locality or from the general vicinity of the plant, is the entire definition so far as this case is concerned. *Holly Hill Fruit Products, Inc.* vs. *Addison, supra.*

In the present case, the valid part of the definition from October 20, 1938 to June 15, 1939 provided the exemption if the employee was engaged in working on commodities produced on the farm itself or if the commodities were obtained from farms in the immediate locality of the establishment. As to the curing of defendant's own citron for which a period is not specified, if it fell during such period, such operation would be exempt in any case and the same would apply to the operation of defendant in canning its own grapefruit from February 28, 1939 to March 26, 1939. The other operation performed by defendant during this period was the canning of pigeon peas from February 20, 1938 to January 6, 1939. The canning of pigeon peas by defendant is relatively unimportant, but in any event the only evidence in the case as to where these peas came from is to the effect that they were purchased by defendant at Rio Piedras, which is a distance of 3.3 kilometers from defendant's plant. I therefore hold that during this period all of the operations of defendant were exempt from the provisions of the Fair Labor Standards Act of 1938.

Effective June 17, 1939, the pertinent part of the definition of "area of production" under Section 13-a-10, was as follows:

> "a) If he performs those operations on materials, all of which come from farms in the general vicinity of the establishment where he is employed and the number of employees engaged in those oper-

ations in that establishment does not exceed seven . . ."

This was continued in substantially that form to date except that on April 1st, 1941, the number of permissible employees was raised to ten. The limitation regarding the number of employees being invalid, the question to be decided is whether or not the operations performed by defendant after June 17 were on commodities which came from the general vicinity of defendant's plant. I am of the opinion that they did. As remarked above, "general vicinity" is not a precise definition, but has to be defined itself in each case in accordance with the facts of the situation. Puerto Rico is itself a relatively small island and the area in which grapefruit is grown is roughly on the northern coastal plain and in the central part of that plain, that is, from the town of Loiza on the east to Arecibo on the west, with the heaviest production around Manati, Bayamón, Cataño and Rio Piedras. As regards the canning of grapefruit for other farmers during twelve days in 1940, it is clear from the evidence that this plant was the *only available cannery* which the farmers could use during those twelve days and that such canning was a salvage operation for the benefit of the farmers.

All pineapple canning operations by defendant were subsequent to June 17, 1939 and while the valid part of the Administrator's definition referred to "general vicinity."[6] It was also shown that during the periods when the defendant was canning pineapples, it was the only cannery operating in Puerto Rico which would can pineapple purchased from growers. The other canneries canned only their own product and would not can for independent growers. The area in which pineapple is grown in Puerto Rico is approximately the same as that in which grapefruit is grown except that pineapple are also grown in the municipalities of Corozal and Cidra which are further toward the interior of the Island, but still on the north slope of the chain of hills or mountains which run

east and west from one end of the Island to the other. All of these municipalities are connected with an excellent system of good roads and both the grapefruit-growing area and the pineapple-growing area are compact. Certainly in the ordinary concept of the term this area is the area of production of pineapples in Puerto Rico and defendant's plant is located well within that area, and it is clear also that under the Administrator's definition referring to general vicinity, all the pineapples came from the general vicinity of defendant's cannery. To hold otherwise in this case would be to go against the clear intent of Congress. It seems to me that "general vicinity" must be adapted to the circumstances in each case. Had there been a number of other canneries operating within the pineapple-growing area, the situation of the defendant in this case might have been different, but it is not necessary to pass on that question. In fact, considering the small size of Puerto Rico, the density of population, the complete network of roads, the preponderance of agriculture in the insular economy and the intense cultivation to which the land is subjected, it might very well be held that the entire Island of Puerto Rico in any event and in any case is within the general vicinity of any other part of the Island.

As regards the processing of coconuts done by the defendant, the situation varies from its other operations. Coconuts grow on the entire narrow coastal plain of Puerto Rico which borders the Island, but the coconuts processed by the defendant during the period covered by the Complaint are shown to have come from the area between Aguadilla on the northwest part of the Island to Loiza to the east, the largest amounts during the year 1940 coming from Loiza, which is between ten and fifteen kilometers to the east of defendant's plant. (Exhibit "D" attached to Stipulation of Facts). The only coconuts involved in the year 1940 which came from any considerable distance, was one shipment purchased from George Sanders in

Aguadilla. The remainder came from an area so close to defendant's plant as to be without doubt within the general vicinity. During the year 1941, the coconuts received and processed by defendant outside of what could be called immediate area, were a number of relatively small shipments from Aguadilla and Cabo Rojo and one shipment from Vieques, a small island belonging to Puerto Rico located off the east coast. During the five periods when defendant was engaged in shredding and drying coconuts, there was no other plant in the entire island which did this processing work and hence this was the *only plant available to farmers anywhere in Puerto Rico* for the sale of coconuts for this purpose. Under these circumstances I hold that all of the coconuts processed by defendant during the period covered by this Complaint came from the general vicinity of defendant's plant within the meaning of the law and the Administrator's definition, and that in any event the isolated shipments from Aguadilla and Cabo Rojo, and Vieques would not affect the exemption even if it could be held that some towns in the island are not within the general vicinity of defendant's coconut processing sheds.

The curing of citron was done, on the same land in which the citron was grown, except the quantities purchased by defendant from one grower whose farm is in Adjuntas, Puerto Rico. This purchased citron was transported to defendant's own farm and there cured. So far as the employees engaged in the curing of defendant's own citron on the farm are concerned, defendant was clearly exempt from the provisions of the Act by Section 13-a-6, coupled with the definition of "agriculture" in Section 3(f) and as to the purchase made from Antonio Saliceti at Adjuntas, I am of the opinion that this should be held to have come from a farm in the general vicinity of defendant's farm where the product was cured.

Due to the conclusions which I have reached in this case, it is not necessary to consider the exemption from

the provisions of Section 7 as regards seasonal operations, as provided in Section 7(c) of the Act. Under the facts of the case, a number of the operations performed by defendant and in which the plaintiff or some of them were employed, were seasonal in their nature and limited to such time as to bring such operations within the exemption from Section 7, but since I have reached the conclusion that all of the operations of defendant covered by the Complaint are exempt either under Sections 3(f) and 13-a-6 or under Section 13-a-10 of the Act, it is not necessary to discuss the provisions of Section 7(c).

Judgment will be entered for the defendant dismissing the Complaint.

San Juan, Puerto Rico, August 19, 1943.

(Sgd.) Robert A. Cooper
Judge